
Introduced by Senator KnightFebruary 22, 2002

An act to amend Section 65892.13 of the Government Code, relating to local planning.

LEGISLATIVE COUNSEL'S DIGEST

SB 1989, as introduced, Knight. Small wind energy systems.

Existing law authorizes a local agency to provide by ordinance, until July 1, 2005, for the installation of small wind energy systems, as specified, and to issue a conditional use permit for this purpose, except where otherwise prohibited by law. Existing law also authorizes a local agency to impose conditions on the installation of these systems, and requires a local agency to approve an application for a small wind energy system by right if specified conditions are met.

This bill would prohibit a small wind energy system from being sited on land near or within a restricted military airspace without first coordinating with the governing authority of that airspace.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 65892.13 of the Government Code is
2 amended to read:
3 65892.13. (a) The Legislature finds and declares all of the
4 following:
5 (1) California has a shortage of reliable electricity supply,
6 which has led the Governor to proclaim a state of emergency and
7 to issue numerous executive orders to lessen, and mitigate the



1 effects of, the shortage. The executive orders, among other things,
2 expedite and shorten the processing of applications for existing
3 and new powerplants, establish an emergency siting process for
4 peaking and renewable powerplants, and relax existing air
5 pollutant emission requirements in order to allow power
6 generation facilities to continue generating much needed
7 electricity.

8 (2) Wind energy is an abundant, renewable, and nonpolluting
9 energy resource. When converted to electricity, it reduces our
10 dependence on nonrenewable energy resources and reduces air
11 and water pollution that result from conventional sources.
12 Distributed small wind energy systems also enhance the reliability
13 and power quality of the power grid, reduce peak power demands,
14 increase in-state electricity generation, diversify the state's energy
15 supply portfolio, and make the electricity supply market more
16 competitive by promoting consumer choice.

17 (3) In 2000, the Legislature and Governor recognized the need
18 to promote all feasible adoption of clean, renewable, and
19 distributed energy sources by enacting the Reliable Electric
20 Service Investments Act (Article 15 (commencing with Section
21 399) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities
22 Code). As set forth in Section 399.6 of the Public Utilities Code,
23 the stated objectives of the act include to "increase, in the near
24 term, the quantity of California's electricity generated by in-state
25 renewable energy resources while protecting system reliability,
26 fostering resource diversity, and obtaining the greatest
27 environmental benefits for California residents."

28 (4) Small wind energy systems, designed for onsite home,
29 farm, and small commercial use, are recognized by the Legislature
30 and the State Energy Resources Conservation and Development
31 Commission as an excellent technology to help achieve the goals
32 of increased in-state electricity generation, reduced demand on the
33 state electric grid, increased consumer energy independence, and
34 nonpolluting electricity generation. In June 2001, the commission
35 adopted a Renewable Investment Plan that includes one hundred
36 one million two hundred fifty thousand dollars (\$101,250,000)
37 over the next five years, in the form of a 50 percent buydown
38 incentive for the purchasers of "emerging renewable
39 technologies," including small wind energy systems.



(5) In light of the state's electricity supply shortage and its existing program to encourage the adoption of small wind energy systems, it is the intent of the Legislature that any ordinances regulating small wind energy systems adopted by local agencies have the effect of providing for the installation and use of small wind energy systems and that provisions in these ordinances relating to matters including, but not limited to, parcel size, tower height, noise, notice, and setback requirements do not unreasonably restrict the ability of homeowners, farms, and small businesses to install small wind energy systems in zones in which they are authorized by local ordinance. It is the policy of the state to promote and encourage the use of small wind energy systems and to limit obstacles to their use.

(b) The implementation of consistent statewide standards to achieve the timely and cost-effective installation of small wind energy systems is not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution, but is instead a matter of statewide concern. It is the intent of the Legislature that this section apply to all local agencies, including, but not limited to, charter cities, charter counties, and charter cities and counties.

(c) The following definitions govern this section:

(1) "Small wind energy system" means a wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity that does not exceed the allowable rated capacity under the Emerging Renewables Fund of the Renewables Investment Plan administered by the California Energy Commission and which will be used primarily to reduce onsite consumption of utility power.

(2) "Tower height" means the height above grade of the fixed portion of the tower, excluding the wind turbine.

(d) Any local agency may, by ordinance, provide for the installation of small wind energy systems in the jurisdiction outside an "urbanized area," as defined in paragraph (2) of subdivision (b) of Section 21080.7 of the Public Resources Code pursuant to this section. The local agency may establish a process for the issuance of a conditional use permit for small wind energy systems.

(1) The ordinance may impose conditions on the installation of small wind energy systems that include, but are not limited to,

1 notice, tower height, setback, view protection, aesthetics, aviation,
2 and design safety requirements. However, the ordinance shall not
3 require conditions on notice, tower height, setbacks, noise level,
4 turbine approval, tower drawings, and engineering analysis, or
5 line drawings that are more restrictive than the following:

6 (A) Notice of an application for installation of a small wind
7 energy system shall be provided to property owners within 300
8 feet of the property on which the system is to be located.

9 (B) Tower heights of not more than 65 feet shall be allowed on
10 parcels between one and five acres and tower heights of not more
11 than 80 feet shall be allowed on parcels of five acres or more,
12 provided that the application includes evidence that the proposed
13 height does not exceed the height recommended by the
14 manufacturer or distributor of the system.

15 (C) Setbacks for the system tower shall be no farther from the
16 property line than the height of the system, provided that it also
17 complies with any applicable fire setback requirements pursuant
18 to Section 4290 of the Public Resources Code.

19 (D) Decibel levels for the system shall not exceed the lesser of
20 60 decibels (dBA), or any existing maximum noise levels applied
21 pursuant to the noise element of a general plan for the applicable
22 zoning classification in a jurisdiction, as measured at the closest
23 neighboring inhabited dwelling, except during short-term events
24 such as utility outages and severe wind storms.

25 (E) The system's turbine must have been approved by the
26 California Energy Commission as qualifying under the Emerging
27 Renewables Fund of the commission's Renewables Investment
28 Plan or certified by a national program recognized and approved
29 by the Energy Commission.

30 (F) The application shall include standard drawings and an
31 engineering analysis of the system's tower, showing compliance
32 with the Uniform Building Code or the California Building
33 Standards Code and certification by a professional mechanical,
34 structural, or civil engineer licensed by this state. However, a wet
35 stamp shall not be required, provided that the application
36 demonstrates that the system is designed to meet the most stringent
37 wind requirements (Uniform Building Code wind exposure D),
38 the requirements for the worst seismic class (Seismic 4), and the
39 weakest soil class, with a soil strength of not more than 1,000



1 pounds per square foot, or other relevant conditions normally
2 required by a local agency.

3 (G) The system shall comply with all applicable Federal
4 Aviation Administration requirements, including Subpart B
5 (commencing with Section 77.11) of Part 77 of Title 14 of the
6 Code of Federal Regulations regarding installations close to
7 airports, and the State Aeronautics Act (Part 1 (commencing with
8 Section 21001) of Division 9 of the Public Utilities Code).

9 (H) The application shall include a line drawing of the
10 electrical components of the system in sufficient detail to allow for
11 a determination that the manner of installation conforms to the
12 National Electric Code.

13 (2) The ordinance may require the applicant to provide
14 information demonstrating that the system will be used primarily
15 to reduce onsite consumption of electricity. The ordinance may
16 also require the application to include evidence, unless the
17 applicant does not plan to connect the system to the electricity grid,
18 that the electric utility service provider that serves the proposed
19 site has been informed of the applicant's intent to install an
20 interconnected customer-owned electricity generator.

21 (3) A small wind energy system shall not be allowed where
22 otherwise prohibited by any of the following:

23 (A) A local coastal program and any implementing regulations
24 adopted pursuant to the California Coastal Act, Division 20
25 (commencing with Section 30000) of the Public Resources Code.

26 (B) The California Coastal Commission, pursuant to the
27 California Coastal Act, Division 20 (commencing with Section
28 30000) of the Public Resources Code.

29 (C) The regional plan and any implementing regulations
30 adopted by the Tahoe Regional Planning Agency pursuant to the
31 Tahoe Regional Planning Compact, Title 7.4 (commencing with
32 Section 66800) of the Government Code.

33 (D) The San Francisco Bay Plan and any implementing
34 regulations adopted by the San Francisco Bay Conservation and
35 Development Commission pursuant to the McAteer-Petris Act,
36 Title 7.2 (commencing with Section 66600) of the Government
37 Code.

38 (E) A comprehensive land use plan and any implementing
39 regulations adopted by an airport land use commission pursuant to

1 Article 3.5 (commencing with Section 21670) of Chapter 4 of
2 Division 9 of Part 1 of the Public Utilities Code.

3 (F) The Alquist-Priolo Earthquake Fault Zoning Act, Chapter
4 7.5 (commencing with Section 2621) of Division 2 of the Public
5 Resources Code.

6 (G) A local agency to protect the scenic appearance of the
7 scenic highway corridor designated pursuant to Article 2.5
8 (commencing with Section 260) of Chapter 2 of Division 1 of the
9 Streets and Highways Code.

10 (H) The terms of a conservation easement entered into pursuant
11 to Chapter 4 (commencing with Section 815) of Division 2 of Part
12 2 of the Civil Code.

13 (I) The terms of an open-space easement entered into pursuant
14 to the Open-space Easement Act of 1974, Chapter 6.6
15 (commencing with Section 51070) of Division 1 of Title 5 of the
16 Government Code.

17 (J) The terms of an agricultural conservation easement entered
18 into pursuant to the California Farmland Conservancy Program
19 Act, Division 10.2 (commencing with Section 10200) of the
20 Public Resources Code.

21 (K) The terms of a contract entered into pursuant to the
22 Williamson Act, Chapter 7 (commencing with Section 51200) of
23 Division 1 of Title 5 of the Government Code.

24 (L) The listing of the proposed site in the National Register of
25 Historic Places or the California Register of Historical Resources
26 pursuant to Section 5024.1 of the Public Resources Code.

27 (4) *A small wind energy system shall not be sited on land near*
28 *or within a restricted military airspace without first coordinating*
29 *with the governing authority of that airspace.*

30 (5) In the event a small wind energy system is proposed to be
31 sited in an agricultural area that may have aircraft operating at low
32 altitudes, the local agency shall take reasonable steps, concurrent
33 with other notices issued pursuant to this subdivision, to notify pest
34 control aircraft pilots registered to operate in the county pursuant
35 to Section 11921 of the Food and Agriculture Code.

36 ~~(5)~~

37 (6) Notwithstanding the requirements of paragraph (1), a local
38 agency may, if it deems it necessary due to circumstances specific
39 to the proposed installation, provide notice by placing a display
40 advertisement of at least one-eighth page in at least one newspaper



1 of general circulation within the local agency in which the
2 installation is proposed.

3 ~~(6)~~

4 (7) Nothing in this section shall be construed to alter or affect
5 existing law regarding the authority of local agencies to review an
6 application.

7 (e) Notwithstanding subdivision (f), any local agency that has
8 not adopted an ordinance in accordance with subdivision (d) by
9 July 1, 2002, may adopt such *an* ordinance at a later date, but any
10 applications that are submitted between July 1, 2002, and the
11 adopted date of the ordinance must be approved pursuant to
12 subdivision (f).

13 (f) Any local agency ~~which~~ *that* has not adopted an ordinance
14 pursuant to subdivision (d) on or before July 1, 2002, shall approve
15 applications for a small wind energy systems by right if all of the
16 following conditions are met:

17 (1) The size of the parcel where the system is located is at least
18 one acre and is outside an “urbanized area,” as defined in
19 paragraph (2) of subdivision (b) of Section 21080.7 of the Public
20 Resources Code.

21 (2) The tower height on parcels that are less than five acres does
22 not exceed 80 feet.

23 (3) No part of the system, including guy wire anchors, extends
24 closer than 30 feet to the property boundary, provided that it also
25 complies with any applicable fire setback requirements pursuant
26 to Section 4290 of the Public Resources Code.

27 (4) The system does not exceed 60 decibels (dBA), as measured
28 at the closest neighboring inhabited dwelling, except during
29 short-term events such as utility outages and severe wind storms.

30 (5) The system’s turbine has been approved by the State Energy
31 Resources Conservation and Development Commission as
32 qualifying under the Emerging Renewables Fund of the
33 commission’s Renewables Investment Plan or certified by a
34 national program recognized and approved by the Energy
35 Commission.

36 (6) The application includes standard drawings and an
37 engineering analysis of the tower, showing compliance with the
38 Uniform Building Code or the California Building Standards Code
39 and certification by a licensed professional engineer. A wet stamp
40 is not required if the application demonstrates that the system is

1 designed to meet the most stringent wind requirements (Uniform
2 Building Code wind exposure D), the requirements for the worst
3 seismic class (Seismic 4), and the weakest soil class, with a soil
4 strength of not more than 1,000 pounds per square foot, or other
5 relevant conditions normally required by a local agency.

6 (7) The system complies with all applicable Federal Aviation
7 Administration requirements, including any necessary approvals
8 for installations close to airports, and the requirements of the State
9 Aeronautics Act (Part 1 (commencing with Section 21001) of
10 Division 9 of the Public Utilities Code).

11 (8) The application includes a line drawing of the electrical
12 components of the system in sufficient detail to allow for a
13 determination that the manner of installation conforms to the
14 National Electric Code.

15 (9) Unless the applicant does not plan to connect the system to
16 the electricity grid, the application includes evidence, that the
17 electric utility service provider that serves the proposed site has
18 been informed of the applicant's intent to install an interconnected
19 customer-owned electricity generator.

20 (10) A small wind energy system shall not be allowed where
21 otherwise prohibited by any of the following:

22 (A) A local coastal program and any implementing regulations
23 adopted pursuant to the California Coastal Act, Division 20
24 (commencing with Section 30000) of the Public Resources Code.

25 (B) The California Coastal Commission, pursuant to the
26 California Coastal Act, Division 20 (commencing with Section
27 30000) of the Public Resources Code.

28 (C) The regional plan and any implementing regulations
29 adopted by the Tahoe Regional Planning Agency pursuant to the
30 Tahoe Regional Planning Compact, Title 7.4 (commencing with
31 Section 66800) of the Government Code.

32 (D) The San Francisco Bay Plan and any implementing
33 regulations adopted by the San Francisco Bay Conservation and
34 Development Commission pursuant to the McAteer-Petris Act,
35 Title 7.2 (commencing with Section 66600) of the Government
36 Code.

37 (E) A comprehensive land use plan and any implementing
38 regulations adopted by an airport land use commission pursuant to
39 Article 3.5 (commencing with Section 21670) of Chapter 4 of
40 Division 9 of Part 1 of the Public Utilities Code.



(F) The Alquist-Priolo Earthquake Fault Zoning Act, Chapter 7.5 (commencing with Section 2621) of Division 2 of the Public Resources Code.

(G) A local agency to protect the scenic appearance of the scenic highway corridor designated pursuant to Article 2.5 (commencing with Section 260) of Chapter 2 of Division 1 of the Streets and Highways Code.

(H) The terms of a conservation easement entered into pursuant to Chapter 4 (commencing with Section 815) of Division 2 of Part 2 of the Civil Code.

(I) The terms of an open-space easement entered into pursuant to the Open-space Easement Act of 1974, Chapter 6.6 (commencing with Section 51070) of Division 1 of Title 5 of the Government Code.

(J) The terms of an agricultural conservation easement entered into pursuant to the California Farmland Conservancy Program Act, Division 10.2 (commencing with Section 10200) of the Public Resources Code.

(K) The terms of a contract entered into pursuant to the Williamson Act, Chapter 7 (commencing with Section 51200) of Division 1 of Title 5 of the Government Code.

(L) On a site listed in the National Register of Historic Places or the California Register of Historical Resources pursuant to Section 5024.1 of the Public Resources Code.

(11) *A small wind energy system shall not be sited on land near or within a restricted military airspace without first coordinating with the governing authority of that airspace.*

(12) In the event that a proposed site for a small wind energy system is in an agricultural area that may have aircraft operating at low altitudes, the local agency shall take reasonable steps, concurrent with other notices issued pursuant to this subdivision, to notify pest control aircraft pilots registered to operate in the county pursuant to Section 11921 of the Food and Agriculture Code.

~~(12)~~

(13) No other local ordinance, policy, or regulation shall be the basis for a local agency to deny the siting and operation of a small wind energy system under this subdivision.

~~(13)~~

1 (14) No changes in the general plan shall be required to
2 implement this subdivision. Any local agency, when amending its
3 zoning ordinance or general plan to incorporate the policies,
4 procedures, or other provisions applicable to the approval of small
5 wind energy systems, must do so in a manner consistent with the
6 requirements of this subdivision and the Permit Streamlining Act
7 (commencing with Section 65920).

8 (g) This section does not limit the authority of local agencies
9 to adopt less restrictive requirements for the siting and operation
10 of small wind energy systems.

11 (h) A local agency shall review an application for a small wind
12 energy system as expeditiously as possible pursuant to the
13 timelines established in the Permit Streamlining Act
14 (commencing with Section 65920).

15 (i) Fees charged by a local agency to review an application for
16 a small wind energy system shall be determined in accordance with
17 Chapter 5 (commencing with Section 66000).

18 (j) Any requirement of notice to property owners imposed
19 pursuant to subdivision (d) shall ensure that responses to the notice
20 are filed in a timely manner.

21 (k) This section shall become inoperative on July 1, 2005, and
22 as of January 1, 2006, is repealed, unless a later enacted statute,
23 that becomes effective on or before January 1, 2006, deletes or
24 extends that date.

